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REVIEW OF CERTAIN RETAIL § PUBLIC UTILITY COMMISSION
ELECTRIC CUSTOMER PROTECTION §
RULES § OF TEXAS

**COMMENTS OF TEXAS LEGAL SERVICES CENTER ON
STAFF STRAWMAN RULE AND BRIEFING QUESTIONS**

Executive Summary

The following comments of Texas Legal Services Center focus on: 1) the needs of low-income consumers in the electricity market, 2) establishing rules that would better allow low income households to benefit from fair and reasonable electricity costs and maintain a continuous supply of power, 3) providing better information and a safety net for critical care and chronic condition customers in the event of an unplanned outage; 4) minimizing the price risk of low income customers; 5) providing the Office of Public Utility Counsel (OPUC) with the same access to documents as the Public utility Commission (PUC); and 6) improving the reliability of marketing claims.

I. Introduction

Texas Legal Services Center (TLSC) offers these comments on the Staff Strawman Rule (Strawman) and Briefing Questions in its Review of Certain Retail Electric Customer Protection Rules filed on June 25, 2021. These comments are organized consistent with the organization of the draft rule amendments as requested and are formatted to facilitate review by the Staff.

II. Background

Poverty in Texas is widespread and affording utilities is a challenge for low-income families. To provide a context for these comments we begin with the Federal Poverty Guidelines, also referred to as the Federal Poverty Level, which are a measure of wealth or lack

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thereof. The Federal Poverty Guidelines are commonly used as income measures for many programs such as the Supplemental Nutritional Assistance Program, the Weatherization Assistance Program, the Low-Income Home Energy Assistance Programs and the former LITE-UP Texas Program funded by the System Benefit Fund. The 2021 Federal Poverty Guidelines applicable in Texas are shown in Table 1 below.

Table 1

2021 POVERTY GUIDELINES FOR THE 48 CONTIGUOUS STATES AND THE DISTRICT OF COLUMBIA

No. of Persons in family/household	Poverty guideline
1	\$12,880
2	\$17,420
3	\$21,960
4	\$26,500
5	\$31,040
6	\$35,580
7	\$40,120
8	\$44,660

For families/households with more than 8 persons, add \$4,540 for each additional person.

Source: 7732 Federal Register / Vol. 86, No. 19 / Monday, February 1, 2021 / Notices

U.S. Census data report that there are almost 9.7 million households in Texas and that 13.6% of the Texas population lives in poverty¹ compared to 10.5% for the United States.² This means that 13.6% of the Texas population lives on an income at or below the Federal Poverty Guidelines.

Studies of energy burden measure the percent of total income paid by households at various income levels. Home energy is a crippling financial burden for low income Texas

¹ <https://www.census.gov/quickfacts/fact/table/TX/RHI125219>

² <https://www.census.gov/library/publications/2020/demo/p60-270.html>

households. Texas households with incomes below 50% of the Federal Poverty Level pay 29% of their annual income simply for their home energy bills. Households with incomes between 50 and 100% of the Federal Poverty Level spend 15% of their annual income for home utilities. Home energy unaffordability, however, is not only the province of the very poor. Those between 100 and 125% of poverty spend 10% of total income on utilities; those between 125 and 150% spend 8%; those between 150 and 185% spend 7%; and those between 185 and 200% spend 6%.³

Approximately 3.3 million, one third of all Texas households, live at or below 200% of the Federal Poverty Guidelines. Nearly 611,000 Texas households live with income at or below 50% of the Federal Poverty Guidelines and face a home energy burden of 29%. And nearly 803,000 additional Texas households live with incomes between 50% and 100% of the Federal Poverty Guideline and face a home energy burden of 15%.⁴

It is well established that households with lower income spend a greater percentage of total income on utilities but it is less well established how much higher income families spend on utilities. The Texas Energy Poverty Research Institute (TEPRI) estimates that, on average, households with income over 200% of the Federal Poverty Guidelines (non-low income) spend 2% of household income on utilities.⁵

Low income Texans are facing extraordinary challenges this year due to the COVID-19 and the Winter Storm Uri disasters. All low income Texans, in particular African American and Hispanic households, were negatively impacted in terms of income loss, housing insecurity and

³ Fisher, Sheehan & Colton, THE HOME ENERGY AFFORDABILITY GAP 2020 (2ND SERIES), April 2021, Belmont, Massachusetts, Finding #1

⁴ Ibid. Finding #2

⁵ TEPRI • Low-Income Community Profile (LICP) Series June 2019 — V2.1-8/26/2019, PART 1. TEXAS OVERVIEW

risk of eviction, food insecurity and lack of health insurance coverage. The Texas Demographic Center documents significant disparities in income for African American and Hispanic households placing them in greater peril during an economic recession.⁶ Renters, African Americans and households with children are most vulnerable to housing insecurity and risk of eviction.⁷ Access to reasonably priced power is more important than ever.

III. Preamble Questions

- 1. If the Commission removes RTSPP from the POLR rate formulas what would be an equitable approach to POLR pricing moving forward?*

PURA §39.102 (b) requires that: “A provider of last resort shall offer a standard retail service package for each class of customers designated by the commission at a fixed, nondiscountable rate approved by the commission.” The formulas in use are inconsistent with PURA §39.102 (b) and we support removing the Real Time Settlement Price Point (RTSPP) from the Provider of Last Resort (POLR) rate.

POLR rates are posted on the commission’s website.⁸ POLR rates are RTSPP sensitive and are posted as a range, not a single rate. The lowest residential POLR rate available is in the CenterPoint service area priced at 13.7 to 22.3¢ per kilowatthour (kWh). The highest rate is applicable in the Texas-New Mexico Power Company service area with a range of 16.6 to 24.2¢ per kWh. This is an example of the market forcing customers to assume price change risk that should be the responsibility of the REP.

We have always supported the availability of a “standard retail service package” that is offered at a fixed price on a month-to-month basis that charges a single price per kWh which includes all customer costs. The standard retail service package would provide a comparable

⁶ Texas Demographic Center, Texas’s Most Vulnerable Populations, September 20, 2020, p. 3.

⁷ Idib

⁸ <http://www.puc.texas.gov/consumer/electricity/Polr.aspx>

electric plan option for residential customers and promote price competition in the market.

Establishing a standard retail service package is our preference for moving forward.

2. *What other considerations should the Commission take into account in determining whether and how to remove RTSPP from the POLR rate formulas (e.g. the role the POLR rate plays in §25.498, related to prepaid service, etc.?)*

Prepaid customers are by definition low risk customers because they are required to pay for electricity before they use it, however, prepaid rates with their associated fees are among the highest. Because the POLR rate is the price cap for prepaid service we would not be surprised to find, if the data were available, that most prepaid customers are paying the POLR rate.

Households that are least able to absorb losses are assuming price risk for REPs.

Under the commission's rules, there is no limit to the number of times a prepaid customer can be disconnected in any given month. Because prepaid prices change continually predicting how much electricity you can buy with any amount deposited in an account is a challenge and makes prepaid customers more likely to experience disconnection. Because the data filed by utilities on disconnections and the number of customers taking prepaid service is filed as confidential information there is no way to assess whether or not prepaid customers have the same continuity of service as post-paid customers.

We believe the standard retail service package would be an appropriate substitute for the current POLR rate formula. A standard retail service package would provide a fixed rate, predictable monthly electricity costs and establish a POLR package where the industry, not the customer assumes the risk of price changes. Because a standard retail service package is a competitive product and not a cost pass through it is a more appropriate price cap for prepaid service.

IV. §25.471 General Provisions of the Customer Protection Rules

No comment at this time.

V. §25.475 General Retail Electric Provider Requirements and Information Disclosures to Customers.

A. (a) Applicability

The Strawman would limit the applicability of the rule to brokers and aggregators instead of making all provisions of the rule applicable to brokers and aggregators. Brokers and aggregators should be subject to all provisions of the rules.

B. (b) Definitions

No comment at this time.

C. (c) General Retail Electric Provider Requirements

The Strawman consistently changes the verb “shall” to ‘must’ throughout the rule. We support this change and encourage the Commission to adopt these amendments to better protect residential and low income customers.

Our comments follow presented by Strawman section.

1. (c)(1)(C). Specify that the TOS (Terms of Service), EFL (Electricity Facts Label), YRAC (Your Rights as a Customer) and AOR (Acknowledgment of Risk) be provided to the customer by postal mail. The size and length of the documents are much too big to review on a cell phone or small tablet.
2. (c)(1)(D). The Strawman has provisions throughout to require that certain documents be provided to the PUC when requested by the commission or staff. The Office of Public Utility Counsel (OPUC) is the state agency charged to represent residential and small commercial

customers at the PUC. OPUC should have the same access to information as the PUC. The last sentence should be amended to read: The REP must provide such documents at the request of the customer, OPUC, commission, or its staff.

3. (c)(2)(H). Add the sentence: Contracts must not purport to waive statutory or regulatory customer protection requirements.
4. (c)(3)(D). We support requiring contracts to include specific information about the terms of the default renewal product if the customer does not select another provider before contract termination.
5. (c)(3)(E). We support this provision that a customer be served under the terms of the expired contract if the retail electric provider (REP) does not provide notice of expiration and the customer does not select another REP before the contract expires.
6. (c)(3)(F). This provision is consistent with Sec. 39.110 of SB 3 that wholesale indexed products not be offered to residential and small commercial customers.
7. (c)(3)(G). This provision allows indexed products and products that pass through ancillary service charges to be offered to residential and small commercial customers provided the customer provides an AOR (acknowledgement of risk.) SB3 is silent regarding the sale of indexed products and the pass through of ancillary charges to residential and small commercial customers. The commission under its general authority to establish retail customer protection standards may adopt

and enforce rules to protect retail customers from fraudulent, unfair, misleading, deceptive, or anticompetitive practices under PURA §17.001. We ask the commission to use its authority to protect low income and residential consumers from the potential harm of these high risk electricity products.

Retail competition was intended to benefit consumers by assigning price risk to the electric industry. Providers of service who failed in their operations would go out of business and those who operated efficiently and provided high quality service would dominate the market. The result anticipated in theory is not what consumers have experienced. The financial responsibility for the failure of the market during the Winter Storm disaster has fallen squarely on the pocketbooks of consumers who will be paying off losses experienced by REPs for years. Customers who experienced losses are left on their own to pay the high bills they incurred during the Winter Storm. The Acknowledgement of Risk (AOR) for indexed products and pass through of ancillary service charges in (j)(2) and (j)(3) are clear that the customer accepts the risk of paying all charges. This assignment of risk provides no incentive to the REP to manage the customer's financial liability.

The management of price risk should fall squarely on the shoulders of the REPs. It is unreasonable and unfair to offer products to residential customers that may have catastrophic financial impacts.

The potential impact to the 3.3 million families with income below 200% of the Federal Poverty Guidelines is great.

Managing risk in the electricity market is complex and requires specialized knowledge and access to information. The management of risk should be left to the experts. Residential customers should only be offered products that reduce the customer's price risk.

D. (4) Website Requirements

Section 25.471(b)(4) states that *a purpose of the rule is to prohibit fraudulent, unfair, misleading, deceptive, or anticompetitive acts and practices by aggregators, REPs, and brokers in the marketing, solicitation and sale of electric service*, in the administration of any terms of service for electric service and in providing advice or procurement services to, or acting on behalf of, a retail electric customer regarding the selection of a retail electric provider, or a product or service offered by a retail electric provider.

Conspicuously absent from the rule amendments are any changes to eliminate and enforce laws against false marketing claims. The website of the REP is a good starting point for customers who recognize a false or misleading marketing claim to be aware that they can report the abuse to the PUC and the Attorney General's Office. Many consumers have been duped by REP advertising and sales tactics. The commission should take the opportunity in this project to make it easy for consumers to report marketing abuses. Every REP website should provide information on, and if available, a link for consumers to report marketing information they consider false and misleading.

In regard to the Power-to-Choose website the commission should do more to assimilate information about the products and services offered by REPS including but not limited to the following:

- Adopt a standard retail electric service package and provide a comparison chart of rates being offered by REPs.
- Provide a comparison table of the type and amount of fees charged by REPs for meeting customer protection requirements such as sending a disconnection notice and added fees for discretionary services such as disconnection and reconnection which are performed by the TDU and the costs are billed under an approved standard tariff.
- Provide a comparison table of the billing assistance and rate reduction program offered by each REP and the customer protection benefits provided to customers identified as low-income by LILU.

Having comparative information readily available would be of great benefit as a starting point to the average consumer seeking to change REPS.

The Power to Choose Website should be equipped with a link to the commission staff responsible for investigating deceptive and unfair marketing practices and a link to the Attorney General's Office.

E. (d) Changes in contract price and notice of changes.

1. (d)(1) Contract changes other than price. No comment at this time.
2. (d)(2) Price changes. No comment at this time.
3. (d)(3) Notice of changes to terms and conditions. Add language to require a written notice of changes to terms and conditions of a contract to be made by postal mail.
4. (d)(4) Contents of the notice to change terms and conditions. In paragraph (a) delete language which allows the notice to be provided in or with a customer's bill.

F. (e) Contract expiration and renewal offers.

1. (e)(1) Notice Timeline for Expiration of a Non-Fixed Rate Product.
No comment at this time.
2. (e)(2) Notice Timeline for Expiration of a Fixed Rate Product.
No comment at this time.
3. (e)(3)(C). Add a new subparagraph viii to read as follows. A statement that provides information on how to access the Commission's customer education website and phone numbers for those without internet access and those who prefer to call and ask for information.
4. (e)(4) Affirmative consent. No comment at this time.

G. (f) Terms of service document.

1. (f)(1) Identity and contact information. Include a link to the REP's annual report filed at the PUC to the information included in the Terms of Service (TOS).
2. (f)(2)(E) Pricing and payment arrangements. Insert the word full before description of payment arrangements and bill payment assistance programs offered by the REP.
3. (f)(3) Deposits. No comment at this time.
4. (f)(4)(A)(ii) Rescission, Termination and Disconnection. A facsimile number and email address that the customer can use to rescind service must be offered as an option to rescission. Delete "if available."
5. (f)(5) Antidiscrimination. No comment at this time.
6. (f)(6) Other Terms. Add to other terms "fees charged by the REPs, if approved by the Commission, that exceed TDU fees for disconnection and reconnection and other discretionary services and for meeting rule requirements such as sending disconnection notices and disconnection reversal."
7. (f)(7) Contract Expiration Notice. No comment at this time.
8. (f)(8). No comment at this time.
9. (f)(9) Version Number. No comment at this time.

H. (g) Electricity Facts Label

1. (g)(1) Identity and contact information. Add the REP's annual report to the PUC to the information required to be provided.
2. (g)(2)(D) Pricing disclosures. REPs have been able to easily game the reporting of prices using average prices for 500, 1,000 and 2,000 monthly kWh use. Of note are plans that required the customer to use exactly 500, 1,000 or 2,000 kWh per month in order to pay the posted price. A better option is 0 to 500, 501 to 1,000, and 1,001 to 2,000. Applicable to the EFL is also the standard retail service package explained earlier in these comments. The standard package should be included on every EFL for the prospective customer's information.
3. (g)(2)(F) Pricing disclosures. This section explains EFL information to be provided for indexed products. As previously discussed, TLSC opposes the sale of indexed products to residential customers and asks the Commission to prohibit their sale to residential consumers.
4. (g)(3)(A) Fee Disclosures. The rule allows a REP to leave the customer responsible for figuring out the amount of the special charge that would pass through from the TDU. The end of the sentence should be changed to read "and must disclose the amount of the special charge."
5. (g)(4) Term Disclosure. No comment at this time.
6. (g)(5) Renewable Energy Disclosure. No comment at this time.
7. (g)(6) Format of Electricity Facts Label. There is an incomplete question "Does the REP purchase excess" Please clarify.

I. (h) Your Rights as a Customer disclosure

Your Rights as a Customer (YRAC) is an important disclosure that should be as specific as possible to make it a tool customers can use to assure that they are receiving all the services available to help them maintain electric service. In addition to our focus on programs available to low income customers we are interested in steps REPS and TDUs can take to assure the safety of critical and chronic care customers in the event of extended unplanned outages due to equipment failures and/or involuntary load shedding initiated by the Electric Reliability Council of Texas (ERCOT). There is a need to develop emergency operations plans to provide for the safety of critical care and chronic condition customers for the time period between the beginning and end of the outage. See document filed in Project 51812 ISSUES RELATED TO THE STATE OF DISASTER FOR THE FEBRUARY 2021 WINTER WEATHER EVENT by the Texas Disaster Preparedness Durable Medical Equipment Power Task Force. The YRAC should contain information regarding emergency plans although we recognize that those may be developed in another rulemaking proceeding. Following are our suggested edits to the YRAC rule language.

1. (h)(1). No comment at this time.
2. (h)(2). No comment at this time.
3. (h)(3). No comment at this time.
4. (h)(4). No comment at this time.
5. (h)(5). Requires REPs to provide information to customers about available programs. We recommend that the program information be more specific than that in the Strawman. We request that (5)(A) be amended to read:

Programs offered by the REP to provide bill payment assistance, rate

discounts and energy efficiency improvements. This would be followed by a new (5)(B) which states: Programs offered by Federal, state and local entities to provide bill payment assistance, rate discounts and energy efficiency improvements.

6. (h)(5)(B). Renumber as (5)(C) and amend to read: Special services offered to persons with disabilities such as notices in Braille or TTY.
7. (h)(5)(C). Renumber as (5)(D).
8. (h)(5)(D). Renumber as (5)(E). Delete the sentence “A REP may comply with this requirement by providing the customer with instructions for how to inquire about such discounts.”
9. (h)(6). No comment at this time.
10. (h)(7) Identity and contact information. No comment at this time.

No comment at this time.

J. 25.475(i) Advertising Claims.

The language in the Strawman is lacking a standard that REPs and aggregators are required to meet in their claims made about the company and products being marketed. There have been abuses in marketing and the rule should provide a standard for assuring that claims made by REPs and aggregators are not unfair and misleading. We recommend adding the following opening sentence to (j)(1) “All trade names and product names implying discounts must be verifiable and all claims regarding price, savings and environmental quality must be accurate and valid and verified and documented on request to the PUC, OPUC and their staff..”

The Strawman is clear that a REP or aggregator must provide advertising or marketing materials to the commission or its staff upon request. This language should be amended to

include the documentation for claims regarding price, savings and environmental quality.

Furthermore, OPUC should also have access to this information. OPUC is the state agency charged to represent residential and small commercial customers at the PUC. OPUC should have the same access to information as the PUC. We would amend the Strawman wording of the first (now second) sentence as follows: “If a REP or aggregator advertises or markets the specific benefits of a particular electric product, the REP or aggregator must provide the name of the electric product offered in the marketing materials and the documentation for their claimed benefits to the commission, OPUC or their staff, upon request.

1. (i)(1) Print advertisements. Amend the last sentence as follows: “Upon request, a REP must provide to the commission and OPUC the contract documents relating to a product being advertised and any information used to develop or substantiate comparisons made in the advertisement.
2. (i)(2) Television, radio and internet advertisements. The disclosures in this section of the rule should also apply to in person contacts. A REP may advertise a product at a mall kiosk, a county fair or other public gathering. The title should be amended to read: Television, radio, internet and in person advertisements. The first sentence should be amended to include in person advertisements. Furthermore, the last sentence should be amended to require that the REP provide documents and information to both the commission and OPUC.
3. (i)(3) Outdoor advertisements. No comment at this time.
4. (i)(4) Renewable energy claims. No comment at this time.

K 25.475 (j) Acknowledgement of risk.

TLSC is opposed to residential customers, especially low income customers assuming risk for price changes in the market. If the commission fails to prohibit these products from being offered to residential customers the acknowledgement of risk must be amended to make it understandable to the average consumer. The wording is too technical for the average consumer to grasp that the plan pricing is very high risk as was evidenced during the Winter Storm.

Section (j)(2) is the disclosure for indexed products which under the Strawman could be offered to residential and low income consumers. This sentence is unintelligible to the average consumer. "I understand that the volatility and fluctuation of indexed pricing based on non-fixed indices may cause my energy bill to be multiple times higher in certain billing periods." We recommend this sentence be replaced with one that is more direct. "I understand that an indexed rate is a high risk choice. Under this plan prices can increase to any amount and they can be very high."

Our comments are the same in regard to the acknowledgement of risk for products that contain a direct pass through of ancillary service charges. The language must be made clear and readily understandable as we commented above in regard to indexed rates.

VI. §25.479. Issuance and Format of Bills

We fully support the Strawman language to change "shall" to "must" and at this time we offer comments on §25.479 (d) Public Service Notice and §25.479(f) Nonrecurring charges. We have no comments at this time on other provisions in §25.479 of the Strawman.

A. (d) Public Service Notice.

The language contained in §25.479(d)(1) is in direct response to the Winter Storm disaster. Millions of people were subject to extended outages, including critical care and chronic

condition customers dependent on electricity to operate medical equipment and maintain temperatures to perform daily functions of life. The public notice requirements set forth in this section fall far short of what customers desperate to keep a family member alive require.

We recommend adding a new section (d)(2) as follows.

(2) In April and October of each year, or as otherwise directed by the commission, the REP must provide information to each critical care and chronic condition customer in a separate postal mailing to explain:

- (A) how involuntary load shedding can affect their power supply:
- (B) the steps the utility and REP have taken to provide a safety net in the event their power is unavailable :
- (C) a dedicated phone number answered by a knowledgeable person to call for information about unplanned outages: and
- (D) contact information for requesting emergency assistance.

B. Non Recurring Charges (f).

REPs have increasingly added new fees for residential customers to pay on top of the discretionary service fees charged by the TDU, municipally owned utility, or electric co-operative that are passed through to the customer. We recommend the following sentence be added to the end of Section (f). “A REP may not impose fees in addition to the discretionary service fees charged by the TDU, municipally owned utility, or electric cooperative.”

VII. Summary and Conclusions

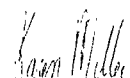
TLSC appreciates the opportunity to provide comments on this Strawman and asks the commission to consider the consequences of the forthcoming rulemaking on low income

customers. We believe our recommendations such as those set forth below are in the interests of all residential customers and the market:

- Having the standard retail electric service package replace the residential POLR formula,
- Prohibiting sales to residential customer of indexed products and products that pass ancillary services charges through to the customer,
- Providing better information and a safety net for critical care and chronic care residential customer during an unplanned outage,
- Strengthening rules to prevent customers from being subject to false and misleading advertising claims, and
- Requiring meaningful disclosures for customers shopping for electricity

We look forward to working with other parties in the near future to further develop these important changes in the commission's customer protection rules.

Respectfully submitted:



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